

REPORT N° 24/05¹

PETITION 282/04

ADMISSIBLE

ANA MARIA RUGGERI COVA, PERKINS ROCHA CONTRERAS and JUAN CARLOS APITZ

VENEZUELA

March 8, 2005

I. SUMMARY

1. On April 6, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a complaint lodged by Ana Maria Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera (hereinafter the petitioners) with the assistance of Dr. Héctor Faúndez Ledesma (hereinafter "the petitioners' representative"), claiming that the Bolivarian Republic of Venezuela (hereinafter the "Venezuelan State" or the "State") is responsible for removing the petitioners from their positions as magistrates in the First Court of Administrative Disputes (hereinafter the "First Court"). The petitioners claim that the reported acts constitute violations of several provisions of the American Convention on Human Rights (hereinafter the "American Convention"): the right to judicial guarantees (Article 8), political rights (Article 23), equality under the law (Article 24), judicial protection (Article 25), and the rights derived from representative democracy as a form of government (Article 29(c)), consistent with the general obligations envisaged in Article 1(1) and the duty established in Article 2 of that convention.

2. The petitioners contended that the petition met the requirements for admissibility established in the American Convention. The petitioners asserted that in the case at hand there were grounds for exemption from the exhaustion requirement given the unwarranted delay by the judicial system, which reached a decision on their remedies after the deadlines established by Venezuelan law had lapsed. In addition, they claim that their removal was decided by an agency with no jurisdiction in such matters and no autonomy and that they were not allowed the right to a defense.

3. In its response, the State requested that the petition be declared inadmissible. It argued that the petitioners were removed from their positions as magistrates of the First Court on grounds that they had "committed serious and inexcusable errors, as stated in the judgment handed down by the Political-Administrative Chamber of the Supreme Court of Justice, dated June 3, 2003. It indicated that, according to Article 40(4) of the Law on Careers in the Judiciary, the Inspectorate General of Courts (hereinafter the "Inspectorate General" or "Inspectorate") concluded that the aforementioned magistrates should be removed. The State noted that the process of removal was conducted in accordance with the rules of due process and the right to defense.

4. After reviewing the positions of the parties, the Commission concluded that it had jurisdiction to judge the claim submitted by the alleged victims and that the case was admissible under Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties and to publicize this report on admissibility and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On April 6, 2004, the Inter-American Commission on Human Rights received a petition lodged by Drs. Ana Maria Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera against the Venezuelan State. The Commission filed the petition as No. P-282/04 and transmitted the relevant parts to the State pursuant to Article 30(2) of the Rules of Procedure of the IACHR on May 18, 2004, giving it two months to submit its comments.

¹ Commissioner Freddy Gutiérrez, a Venezuelan national, did not participate in the debates or the voting on this report, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

6. On October 26, the State submitted a response to the petition. On November 17, 2004, the Commission remitted to the petitioners the relevant parts of the State's response.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

7. The petitioners claim that on October 30, 2003, they were removed from their positions as magistrates of the First Court.² They attribute their dismissal to the fact that between August 2002 and August 2003, the court in which they were magistrates had handed down a dozen judgments against government agencies which, in the context of the country's political polarization, would have caused problems for the Executive branch and had a national impact.³

8. They assert that their dismissal as judges on the presumption that they had committed serious irregularities was in violation of their guarantee to hold public office in perpetuity. They argue that they received discriminatory treatment compared with other judges, as they were subjected to an unprecedented, summary procedure devoid of any guarantee of a defense. In addition, they allege that the judges who were pro-government received preferential treatment. They claim that they did not have access to any simple or swift remedies or any other effective recourse to independent judges or competent courts. The petitioners filed a hierarchical appeal for annulment with the Full Chamber of the Supreme Court of Justice, which failed to issue a ruling within the time limits established by law. According to the petitioners, the delay by the Venezuelan jurisdictional authority was unreasonable and constituted another violation of the right to guarantees and judicial protection.

9. In an account of the facts that led to their removal, the petitioners stated that on June 3, 2003, the Political-Administrative Chamber of the Supreme Court of Justice heard a request for dismissal in case No. 2002/0898 and declared having found an inexcusable judicial error in the First Court's judgment of June 11, 2002 and ordered that a certified copy of that decision be remitted to the Inspector General of Courts. They stated that on September 18, 2003, Mr. Alfredo Romero Oliveros, Judge Perkins Rocha's chauffeur, was arrested by officers of the Directorate of Intelligence and Prevention Services (DISIP) as he was about to deliver said file to the residence of the External Rapporteur of the First Court.⁴

10. The petitioners reported that on September 23, 2003, the First Court was searched by DISIP officers and officials of the Public Prosecutor's Office looking for evidence of what happened on September 18, 2003. They also reported that on September 29, 2003, a Commission from the Inspectorate General of Courts visited the First Court to investigate the

2 When the petitioners functioned as magistrates of the First Court on Administrative Disputes, that Court was not connected to the Political-Administrative Chamber of the Supreme Court of Justice and had nationwide jurisdiction. Its mission consisted of reviewing all the administrative acts of the national government and state and municipal public authorities, except for ministerial acts. The petitioners stated that after the Supreme Court, the First Court was the next highest national court.

3 Among the cases that attracted national attention, the petitioners referred to the following ones, reported in the press as controversial judgments: "Dissidents. Since 04-11-02, the court suspended the commissions of inquiry against military dissidents. Militarization of Miranda State: On 11-27-02, an action against the militarization of Miranda State was admitted. Intervention of the Metropolitan Police (PM): On 05-20-03 it ordered the return of vehicles confiscated from the PM. Unapetrol: On June 12, it granted precautionary measures for workers of Unapetrol who backed the PDVSA strike. Cuban doctors: On August 21, it suspended the approval of Cuban doctors who were assisting with the "Barrios Adentro" plan (in low-income neighborhoods) created by the government. This decision was contested in the Supreme Court. Globovisión: Before magistrates Apitz and Rocha were suspended, a judgment requiring that the equipment seized from Globovisión be returned had been prepared." Article in El Universal: Suspension from First Court divides magistrates, Irma Álvarez. October 2003.

4 In the complaints, the petitioners state that Mr. Alfredo Romero Oliveros was moved to DISIP Headquarters on September 19, where he was held incommunicado for 36 hours without food or drink and interrogated about the lifestyles of his superiors. They say that on September 20, 2003 the Fifth Court of Control of the Criminal Circuit Court of Miranda State issued a decision to detain Oliveros alleging that he had committed the crime of concealing and withholding a public document. He was later remanded to a high security prison, where he was held for 25 days. Oliveros was released by judgment of the Criminal Chamber of the Supreme Court of Justice, which overturned the decision of the Fifth Court, invalidating any investigation that would have been carried out based on the same material facts used in that decision.

events of September 18. On October 6, 2003, the magistrates are summoned as defendants by the Public Prosecutor's Office in connection with the alleged irregularities that occurred when the original file was removed from the First Court. On October 8, 2003, the Commission on Judicial System Operations and Reconstruction suspended magistrates Apitz and Rocha Contreras and initiated an investigation into the events of September 18, 2003.

11. Furthermore, by judgment of the Political-Administrative Chamber of the Supreme Court of Justice of September 11, 2003, the Inspector General of Courts initiated disciplinary proceedings against the magistrates of the First Court, which ended on October 7, 2003 with magistrates Ana Maria Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera, Luisa Estrella Morales and Evelyn Marrero Ortiz being accused of having committed serious, inexcusable judicial errors. The Inspector General of Courts based his arguments on Article 40(4) of the Law on Careers in the Judiciary, an ordered their dismissal as judges. The petitioners indicated that the order for dismissal was a violation of the Law on Careers in the Judiciary as Article 40(4) establishes that dismissal must be requested and decided by the respective Chamber of the Supreme Court of Justice, in this case, the Political-Administrative Chamber.

12. They state that on October 30, 2003, the Commission on Judicial System Operations and Reconstruction⁵ (hereinafter the "Operations Commission") dismissed the magistrates, except for Judge Evelyn Marrero Ortiz, who had retired on March 28, 2003. They also reported that on December 11, 2003, the same Operations Commission admitted an appeal for review filed by Judge Ana Maria Estrella Morales, revoking the order for her dismissal and granting her retirement benefits. The petitioners argue that the two judges who received these benefits had cast dissenting votes in all the cases involving the government in which the First Court had ruled against the interests of the government.

13. On November 13, 2003, the petitioners lodged a hierarchical appeal against the dismissal order with the Full Chamber of the Supreme Court of Justice. The petitioners report that there was an unwarranted delay; due to the fact that their appeal was not decided within the time limits set by law.⁶ On November 27, the petitioners filed a joint appeal for annulment and for precautionary measures of constitutional *amparo* with the Political-Administrative Chamber of the Supreme Court of Justice, which had not been decided on the date of filing this complaint with the IACHR.

14. Regarding their arguments in law, the petitioners claim that their guarantees and judicial protection under Articles 8 and 25 of the American Convention were violated because, they contend, the circumstances that led to their dismissal were due to the fact that the decisions they took as judges of the First Court were contrary to the interests of the executive and legislative branches. They also state that the agency that declared their suspension had no jurisdiction to take disciplinary decisions as it was not an independent body. They argued that in the process they were not allowed a hearing in an independent and impartial court. The petitioners claim that the Inspectorate General of Courts had no jurisdiction to undertake administrative proceedings declaring the action of the magistrates as "a disciplinary matter of unlawful conduct" [*ilícito disciplinario*]. They argued that such a designation also violated the principle of presumption of innocence since there had been no previous disciplinary proceedings. They declared that the Inspectorate acted outside its functions since the Political-Administrative Chamber of the Supreme Court of Justice had never declared that the magistrates should be removed from office. Finally, they indicated that the General Commission on Operations and Restructuring of the Courts exceeded its jurisdiction by dismissing them, since that action was a function of the same authority that had appointed them, namely the plenary of the Supreme Court of Justice.

5 The Commission on Judicial System Operations and Reconstruction was created by Article 28 of the Public Authorities Transitional Regime, published in the Official Gazette N° 39.920 of March 28, 2000.

6 Article 91 of the Organic Law on Administrative Procedure establishes:

The appeal for reconsideration of a decision made by the Minister himself and the hierarchical appeal shall be decided within 90 days of filing.

15. Based on the jurisprudence of the Inter-American system,⁷ the petitioners argued that their dismissal as judges of the First Court was a violation of their right to guarantees—that they would remain in public office in perpetuity—under Article 23(c) of the American Convention. The petitioners argued that their right of access to public office under equal conditions was violated because their judicial decisions were not compromised by the ideology or policies of the current government. The independence of the judiciary was is questionable, evidence of this being that, according to the petitioners, judges are rotated when they issue judgments contrary to the interests of the government, in violation of the principle of the “natural judge” or *juez natural*. Finally, the petitioners claim that the interference of the executive branch in the judiciary undermines the very essence of a democratic society and violates Article 29(c) and (d) of the American Convention.

16. The petitioners claim that they were subject to discriminatory treatment in comparison with other judges, as they were subjected to a procedure devoid of the guarantees established in the American Convention for proper defense. They also claim that preferential treatment was given to two judges of the First Court, who cast dissenting votes in the cases concerning the government.

17. The petitioners claimed that they had no access to a simple and swift or effective remedies that would have protected them against the acts they allege violated their human rights.

18. Regarding the required exhaustion of domestic remedies, the petitioners stated that they filed three available internal appeals, none of which were decided within the time limits established by Venezuelan law. The petitioners indicate that, against the administrative act dismissing them as magistrates of the First Chamber, they filed an appeal for constitutional *amparo*⁸ on October 9, 2003 with the Constitutional Chamber of the Supreme Court of Justice (TSJ). They noted that, under Venezuelan legislation, once an appeal for *amparo* is admitted and the parties are notified, there must be a public hearing within no more than 96 hours and the judge must render judgment within the following five calendar days. In this case, the petitioners noted that, up until the date of filing the complaint with the IACHR, the Constitutional Chamber of the TSJ had not even decided on the admissibility of the appeal, thereby denying simple and swift remedy, as envisaged in Venezuelan law and the American Convention. The Commission took note of the fact that the appeal for *amparo* was decided on June 21, 2004. The Constitutional Court terminated the case on grounds that the proceedings had been abandoned, basing its decision on the fact that the complainant had last acted in the proceedings on December 9, 2003.

19. In addition, on November 13, 2003, the petitioners filed a hierarchical appeal against the administrative acts of the Commission on restructuring the judicial system, which ordered their dismissal in the Full Chamber of the Supreme Court of Justice. They stated that, despite the fact that Article 91 of the Organic law of Administrative Procedure established that such appeals must be decided within no more than 90 calendar days,⁹ at the time of filing the petition with the Commission no ruling had been handed down.

20. Finally, the petitioners reported that they had filed an appeal for annulment on November 27, 2003, together with a request for precautionary measures of constitutional *amparo* against the administrative act by the Restructuring Commission with the Political-Administrative Chamber of the Supreme Court of Justice. They pointed out that up until the date of dispatch of the report to the IACHR, the Political-Administrative Chamber of the Supreme Court of Justice had taken no decision on admissibility or ruled on the request for precautionary measures. The petitioners explained that neither the appeal for annulment nor the precautionary measures have deadlines established by law.

7 IACHR. Report No. 58/98 Case of the Constitutional Court of Peru, December 9, 1998.

8 Article 49 of the Constitution of the Bolivarian Republic of Venezuela establishes:

The Courts shall protect all inhabitants of the Republic in the enjoyment and exercise of the rights and guarantees established by the Constitution, in accordance with the law. Proceedings shall be short and summary and the trial judge shall have the power to immediately restore the legal situation that was infringed.

9 Article 91 of the Organic Law of Administrative Procedure supra 8.

21. From the preceding arguments, the petitioners claim that the exemption established in Article 46(2) of the American Convention should apply in this case.

B. Position of the State

22. The State maintains that the process of dismissal of the petitioners was carried out in accordance with Article 30 of the Decree on the Public Authorities Transitional Regime. It points out that the investigation was not automatically initiated by the Commission on Judicial System Operations and Restructuring but by the Inspectorate General of Courts acting on a communication from the Supreme Court of Justice. It states that the petitioners were duly notified of the purpose of the investigation since its initial stages on September 10, 2003, so that they could exercise their right to a defense. The State notes that on October 7, 2003, the magistrates were summoned to the Inspectorate to give them an opportunity to present their pleas, defenses, and evidence against the accusations. At that time, they had 5 days to present their arguments. The State pointed out that the summons indicated that once that stipulated time period had lapsed, the case would be referred to the Commission on Judicial System Operations and Restructuring. It noted that on October 14, 2003, magistrates Apitz, Rocha and Ruggeri submitted their written defense, objecting to the jurisdiction of the Commission on Judicial System Operations and Restructuring to hear the case. In view of the fact that the petitioners had all the guarantees at their disposal, the Venezuelan State requests that the IACHR declare the case inadmissible.

23. In its account of the facts, the State relates that on October 7, 2003, the Inspectorate General of Courts accused the magistrates of the First Court of having committed a "serious inexcusable error," as stated in the judgment of the Political-Administrative Chamber of the Supreme Court of Justice of June 3, 2003 and ordered the dismissal of the magistrates pursuant to Article 40(4) of the Law on Careers in the Judiciary. The State notes that on that date, the Inspectorate issued summonses for the magistrates to appear within 5 days to present their pleas, defenses, and evidence in the matter of their dismissal, with the warning that once that deadline had lapsed, the case would be transferred to the Commission on Judicial System Operations and Restructuring. It states that, on October 8 of that year, the magistrates had been duly served and had submitted their defense briefs between October 14 and 15, 2003. On October 16, 2003, the Inspectorate General of Courts submitted the case to the Commission on Judicial System Operations and Restructuring with the accusations and the disciplinary procedures to be followed.

24. The State maintains that the arguments advanced by the petitioners regarding the lack of jurisdiction of the Commission on Judicial System Operations and Restructuring were groundless because, until the National Assembly passes a law that determines disciplinary processes and courts, such matters shall be governed by Article 267 of the National Constitution and the rules established by the National Assembly through the Decree on the Public Authorities Transitional Regime, which grants the Commission on Judicial System Operations and Restructuring the power to "settle any disciplinary matter of unlawful conduct [*ilícito disciplinario*] on the part of judges and other judiciary officials."¹⁰

25. Regarding the petitioner's claims of discriminatory action on the part of the State in reprisal for their political-ideological positions, the State presented some statistics on the numbers of complaints submitted by users to the Inspectorate General of Courts against the petitioners. Based on those statistics, the State argues that there were serious doubts about the First Court with respect to negligence and improper functioning. The State also questions the veracity of the petitioner's allegations of political persecution, pointing out that the Inspectorate General of Courts had initiated disciplinary proceedings against all First Court magistrates, acting on a decision of the Supreme Court of Justice. It claims that the disciplinary proceedings against the judges of the First Court were carried out in strict

¹⁰ See Article 24 of the Public Authorities Transitional Regime established by the National Constituent Assembly in Official Gazette No. 36.920 of March 28, 2000.

compliance with the Articles of the Organic Law of the Judiciary Board (Arts. 37-39) and the Law on Careers in the Judiciary (Arts. 38-40). The State notes that the possible punishments range from a warning and suspension without pay to dismissal. The unlawful conduct subject to disciplinary action that the petitioners committed is established in Article 40(4) of the Law on Careers in the Judiciary and is punishable by dismissal.

26. The State maintains that in the process dismissal of the petitioners, all the provisions established by law were scrupulously observed. It noted that when the Commission on Judicial System Operations and Restructuring handed down its decision, the petitioners could have availed themselves of an administrative appeal for reconsideration before the same Commission and/or could have disputed the administrative decision before Political-Administrative Chamber of the Supreme Court of Justice, and that the petitioners did indeed file these appeals in due course.

27. The State refutes the petitioners allegations that their political rights were violated on grounds that it considers these claims to be unfounded.

28. Regarding the petitioners' arguments on the preferential treatment of Mrs. Luisa Estella Morales Lamuño, the State argues that the retirement benefits granted to Mrs. Morales were in compliance with the criteria established by the doctrine of the Supreme Court of Justice, which provided that this benefit could be extended to judges punished by dismissal, who had served for 10 years in the judiciary. The State pointed out that Mrs. Morales met that requirement, having served for 13 years in the judiciary, while the petitioners had served only 3 years.

29. Based on the preceding arguments, the State requests that the Commission declare the case inadmissible, stating that it refutes, rejects, and contests the arguments in fact and in law presented by the petitioners.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction *materiae*, *ratione personae*, *ratione temporis* and *ratione loci* of the Commission

30. The petitioners and their representative are authorized under Article 44 of the Convention to lodge complaints with the IACHR. The petition presents as alleged victims Ana Maria Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera, wherefore the Commission has jurisdiction *ratione personae* to examine the petition. For its part, the State ratified the American Convention on August 9, 1977.

31. The Commission has jurisdiction *ratione loci* to hear the petition as it alleges violations of rights protected in the American Convention that purportedly took place within the territory of a State Party to that treaty. The IACHR also has jurisdiction *ratione temporis* based on the fact that the obligation to respect and guarantee the rights protected in the American Convention was already binding on the Venezuelan State on the date on which the allegations in this petition occurred.

32. In terms of jurisdiction *ratione materiae*, the IACHR notes that the petitioners maintained that the State violated the right to juridical guarantees (Article 8); to political rights (Article 23); equality before the law (Article 24), judicial protection (Article 25), and the rights flowing from the representative democratic form of government (Article 29(c)), consonant with the general obligation envisaged in Article 1(1) and the duty envisaged in Article 2, which are protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

33. Article 46(1) of the American Convention establishes as a requirement for admissibility for a complaint the prior exhaustion of remedies available within the domestic jurisdiction of the State.

34. The State made no preliminary objections to the failure to exhaust domestic remedies. Consequently, the Inter-American Commission finds that, in this petition, the Venezuelan State did not invoke the failure to exhaust domestic remedies in the initial stages of the proceedings.

35. The Inter-American Court has repeatedly asserted that “the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings, lest a waiver of the requirement by the State concerned be presumed.”¹¹

36. Therefore, the Commission finds that the Venezuelan State forfeited any objection to the failure to exhaust domestic remedies, since it did not raise such an objection at the earliest opportunity in the process, namely in its response to the petition that gave rise to the proceedings.

2. Deadline for Lodging a Petition with the Commission

37. In the petition under review, the IACHR established the tacit forfeiture by the Venezuelan State of its right to object to the failure to exhaust domestic remedies, wherefore Article 46(1)(b) of the American Convention applies. However, the Convention’s requirements that domestic remedies be exhausted and that the petition be filed within six months of issue of the judgment exhausting domestic remedies are separate. The Commission finds that compliance with that deadline is not applicable either, because the petition was presented within a reasonable time frame, as indicated in Article 32(2) of its Rules of Procedure for cases in which no final judgment was handed down before the petition was filed.¹²

38. Furthermore, the rule provided in 46(1)(b) “does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision [...]”¹³ In that connection, the Commission takes account of the procedural development of the case in the domestic jurisdiction and concludes that the petition was lodged within a reasonable time limit.

3. Duplication of procedures and *res judicata*

39. There is no evidence from the case that the petition is pending in other international proceedings, or that it has already been examined by this or another international agency. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention must be considered satisfied.

4. Characterization of the alleged facts

40. Article 47(b) of the Convention establishes that the Commission will declare inadmissible any petition or communication submitted that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

11 See, for example, Inter.-American Court for Human Rights, Case de la Comunidad Mayagna (Sumo) Awas Tingi, Preliminary Exceptions, Sentence of February 1, 2000, par. 53.

12 IACHR, Report 14/04, Admissibility, Peru, Case 11.568, Luis Antonio Galindo Cárdenas, February 27, 2004, para. 47.

13 IACHR, Report 05/02, Argentina, Case 12.080, Sergio Schiavini and María Teresa de Schiavini, February 27, 2002, para. 55.

41. The State argued to the Commission that there were no facts that constituted violations of the petitioners' human rights. Thus, in the State's opinion, the process of dismissing the petitioners as magistrates of the First Court of Administrative Disputes was carried out in compliance with the principles of due process. The State affirmed that it considered frivolous and unfounded the petitioners' allegations of discrimination on the part of the State on account of the decisions taken by the petitioners when they were on the bench of the First Court, in highly controversial cases nationally.

42. For their part, the petitioners allege that they did not have access to simple and swift remedies to protect their rights, or to due process that guaranteed proper independence and impartiality of the agencies that heard the case, in violation of Articles 25 and 8 of the Convention. They also allege unwarranted delay in the appeals they filed, which exceeded the deadlines established by Venezuelan law. The petitioners state that their dismissal could be classified as political harassment for having handed down decisions in a number of highly controversial cases, in opposition to the interests of the country's political administration.

43. The Commission finds that it is not the purpose of this stage of the proceedings to establish whether or not there has been a violation of the American Convention. For admissibility purposes, the IACHR must decide whether facts establishing a violation exist, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order" (Article 47c).

44. The standard for judging these points is different from the standard required for deciding on the merits of the complaint. The IACHR must make a *prima facie* evaluation of whether the complaint shows cause for the apparent or potential violation of a right guaranteed by the Convention but does not have to establish the existence of a violation. Such a review is a summary analysis that is neither a prejudgment of nor advance opinion on the merits. The Commission's Rules of Procedure, by establishing two clear stages of admissibility and merits, reflect this distinction between the evaluation the Commission must make in order to declare a petition admissible and the assessment required to establish a violation.

45. The Commission finds that, if proven, the allegation that the magistrates had been dismissed by an agency that had no jurisdiction and was not impartial, without respecting their guarantees of due process and without providing them with simple and swift remedies to challenge such a decision, could characterize a violation of Articles 8 and 25 of the American Convention, in connection with the general obligations set forth in Articles 1 and 2 of that instrument, in light of the jurisprudence of the Inter-American system. Additionally, the Commission considers that if proven the allegations put forward by the petitioners regarding lack of access, under general conditions of equality, to public functions, such situation could be characterized as a violation of Article 23(1)(c) of the American Convention.

46. At the same time, the Commission finds that the petitioners have not presented facts that establish discriminatory treatment. The State has alleged and the petitioners have not disproved the allegations that the retirement situation of the three dismissed magistrates and the two retired magistrates were different. Given the different factual situations, differentiated treatment does not constitute discrimination under the terms of Articles 1(1) and 24 of the Convention, according to inter-American jurisprudence¹⁴. Therefore, the petition relative to Article 24 must be declared inadmissible.

14 Inter-American Court Of Human Rights. Proposed Amendments To The Naturalization Provision Of The Constitution Of Costa Rica. Advisory Opinion Oc-4/84, January 19, 1984 Parr. 57.

57. Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. These aims may not be unjust or unreasonable, that is, they may not be arbitrary, capricious, despotic or in conflict with the essential oneness and dignity of humankind.

47. Finally, in light of the allegations by the petitioner, it must be noted that Article 29 of the Convention will be applied in its totality in this and all matters, as a model for interpretation of the contractual obligations of the State.

V. CONCLUSIONS

48. The Commission concludes that the case is admissible and that it has jurisdiction to examine the complaint lodged by the petitioners on the presumed violation of judicial guarantees (Article 8); political rights (Article 23); and juridical protection (Article 25) in accordance with the general obligation set out in Article 1(1) and the duty envisaged in Article 2 of the Convention, subject to the requirements established in Articles 46 and 47 thereof. The Commission finds that the petition is inadmissible on the points relating to Article 24 of the American Convention.

49. Based on the arguments in fact and in law cited above, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the petition under review admissible relative to Articles 8, 23(1)(c) and 25, in accordance with the general obligation stated in Article 1(1) and the duty envisaged in Article 2 of the American Convention.
2. To declare inadmissible the points relating to Article 24 of the American Convention.
3. To notify the State and the petitioners of this decision.
4. To initiate proceedings on the merits of the case.
5. To publish this decision and include it in the Annual Report to be submitted to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 25th day of the month of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett and Florentín Meléndez, Commissioners.